



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

DTE Electric Company,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001811

Frenchtown Township, *et al*,
Respondents.

Presiding Judge
Peter M. Kopke

SUMMARY OF PREHEARING CONFERENCE

SCHEDULING ORDER

NOTICE OF VIDEO CONFERENCE HEARING

A Prehearing Conference on this matter was held on April 12, 2021. Steven P. Schneider, Esq. appeared by telephone on behalf of Petitioner. Jack L. Van Coevering, Esq., Kerry Bondy, Esq., and Matthew B. Hodges, Esq. appeared by telephone on behalf of Respondents. A scheduling order has been established and a video conference hearing, via **Microsoft Teams**, has been set for:

HEARING DATE:	September 20, 2021. The hearing shall continue on September 21, 22, 23, 24, 27, 28, 29, 30, and October 1, 2021 , as necessary.
HEARING TIME:	9:00 a.m.
TEAMS HEARING LINK:	Click here to join the meeting +1 248-509-0316,,125867259# United States, Pontiac Phone Conference ID: 125 867 259#
PARTICIPANTS' GUIDE:	https://bit.ly/34fBXnN

This hearing is open to the public and this notice is provided under the Open Meetings Act. Any participant or member of the public wishing to attend this hearing **must** click on the "Teams Hearing Link" provided above to gain access to the hearing.

This is an important legal document. Please have someone translate the document.

Este es un documento legal importante. Por favor, haga traducir este documento.

এটি একটি গুরুত্বপূর্ণ আইনি দলিল, অনুগ্রহ করে কেউ দলিলটিকে অনুবাদ করুন।

هذا هو وثيقة قانونية هامة يرجى لديك شخص تترجم الوثيقة.

Ito ay isang mahalagang legal na dokumento. Mangyari lamang na magkaroon ng isang tao isalin ang dokumento.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL

611 W. OTTAWA ST • P.O. BOX 30232 • LANSING, MICHIGAN 48909-8195 • 517-335-9760

PREHEARING CONFERENCE SUMMARY

I. VALUATION INFORMATION:

A. The true cash value (TCV), assessed value (AV), and taxable value (TV) for each parcel and tax year at issue as established by the Board of Review:

Parcel Number	Year	TCV	AV	TV
5807-528-009-00	2018	\$733,200,000	\$366,600,000	\$366,600,000
5807-000-193-50	2018	\$27,629,400	\$13,814,700	\$13,814,700
5807-020-505-30	2018	\$24,642,000	\$12,321,000	\$12,321,000
5807-000-194-12	2018	\$11,750,200	\$5,875,100	\$5,875,100
5807-000-194-10	2018	\$11,467,600	\$5,773,800	\$5,773,800

Parcel Number	Year	TCV	AV	TV
5807-528-009-00	2019	\$733,200,000	\$366,600,000	\$366,600,000
5807-000-193-50	2019	\$39,669,600	\$19,834,800	\$19,834,800
5807-020-505-30	2019	\$24,642,000	\$12,321,000	\$12,321,000
5807-000-194-12	2019	\$11,019,400	\$5,509,700	\$5,509,700
5807-000-194-10	2019	\$11,056,200	\$5,528,100	\$5,528,100

B. The parties' contentions of TCV, state equalized value (SEV), and TV for each parcel and tax year at issue:¹

Parcel Number: 5807-528-009-00

	Petitioner's Contentions			Respondent's Contentions		
Year	TCV	SEV	TV	TCV	SEV	TV
2018	\$0.00	\$0.00	\$0.00	\$828,506,353	\$414,253,176	\$414,253,176
2019	\$0.00	\$0.00	\$0.00	\$918,385,734	\$459,192,867	\$459,192,867

Parcel Number: 5807-000-193-50²

Petitioner's Contentions			Respondent's Contentions		
TCV	SEV	TV	TCV	SEV	TV
\$27,629,400	\$13,814,700	\$13,814,700	\$27,845,136	\$13,922,568	\$13,922,568
\$39,669,600	\$19,834,800	\$15,432,938	\$30,865,876	\$15,432,938	\$15,432,938

Parcel Number: 5807-020-505-30

¹ Petitioner provides an allocated "Final Estimate of True Cash Value" for each parcel **based on the TV of the parcels**.

² The first row of the charts for Parcel Nos. 5807-000-193-50, 5807-020-505-30, and 5807-000-194-12 contain the parties' contentions for the 2018 tax year, while the second row of those charts contain the parties' contentions for the 2019 tax year.

Petitioner's Contentions			Respondent's Contentions		
TCV	SEV	TV	TCV	SEV	TV
\$24,642,000	\$12,321,000	\$10,561,926	\$21,123,852	\$10,561,926	\$10,561,926
\$24,642,000	\$12,321,000	\$11,707,722	\$23,415,444	\$11,707,722	\$11,707,722

Parcel Number: 5807-000-194-12

Petitioner's Contentions			Respondent's Contentions		
TCV	SEV	TV	TCV	SEV	TV
\$11,750,200	\$5,875,100	\$5,875,100	\$89,196,994	\$44,598,497	\$44,598,497
\$11,056,200	\$5,528,100	\$5,528,100	\$98,873,408	\$49,436,704	\$49,436,704

Parcel Number: 5807-000-194-10

	Petitioner's Contentions			Respondent's Contentions		
Year	TCV	SEV	TV	TCV	SEV	TV
2018	\$11,467,600	\$5,733,800	\$5,733,800	\$11,467,624	\$5,733,812	\$5,733,812
2019	\$11,019,400	\$5,509,700	\$5,509,700	\$13,861,014	\$6,930,507	\$6,930,507

C. Amounts in dispute for the tax years at issue:

Parcel Number	Year	SEV	TV
5807-528-009-00	2018	\$414,253,176	\$414,253,176
5807-000-193-50	2018	\$107,868	\$107,868
5807-020-505-30	2018	\$1,759,074	\$0.00
5807-000-194-12	2018	\$38,723,397	\$38,723,397
5807-000-194-10	2018	\$12.00	\$12.00

Parcel Number	Year	SEV	TV
5807-528-009-00	2019	\$459,192,867	\$459,192,867
5807-000-193-50	2019	\$4,401,862	\$0.00
5807-020-505-30	2019	\$631,278	\$0.00
5807-000-194-12	2019	\$4,3908,604	\$4,3908,604
5807-000-194-10	2019	\$1,420,807	\$1,420,807

D. TAX INFORMATION: Both parties claim that the taxes at issue have been paid.**III. FACTUAL STATEMENT OF CLAIMS:****A. Classification of property for the tax years at issue:**

Parcel Number	Classification
5807-528-009-00	Industrial Real
5807-000-193-50	Industrial Real
5807-020-505-30	Industrial Personal
5807-000-194-12	Industrial Personal

5807-000-194-10	Utility Personal
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B. Proposed highest and best use (H&BU) for the tax years at issue:

Parcel Number	H&BU
5807-528-009-00	Industrial
5807-000-193-50	Industrial
5807-020-505-30	Industrial
5807-000-194-12	Industrial
5807-000-194-10	Utility

- C. The property's TCV and TV are at issue for each tax year under appeal.
- D. Petitioner's claims or counterclaims: "Petitioner contends that, for tax years 2018 and 2019, the contested assessment and taxable value each exceeds 50% of true cash value."
- E. Respondent's claims or counterclaims: "Respondent conservatively assessed the Subject Plant. The Fermi 2 Power Plant is a nuclear powered electric generating plant nominally rated 1,198 MWe. The Subject Plant is a regulated plant that has a guaranteed 90% of electric demand within DTE's franchise area, an area in which alternative energy suppliers are capped at 10% of the market. This franchise area is expected to experience an electric capacity shortfall beginning in 2022. The Subject Plant has a guaranteed, MPSC-approved return on the invested capital of its net book value of assets and its operating costs. The Subject Plant receives this revenue stream until the Subject Plant's net book value is fully depreciated. The Subject Plant is the only nuclear powered electric generating asset in the DTE franchise area and accounts for over 20% of the electricity in the area of southwest Michigan. It has been continuously improved since 2008 and its license to operate has been extended. DTE has planned for a received approval to build Fermi 3, a nuclear generating facility of greater capacity than the Subject Plant. In 2018, DTE implemented additions to the Subject Plant that increased its taxable value by \$53,630,760.

The Subject Plant operates without the risk of energy markets. Respondent contends that: (1) the Subject Plant is not a merchant plant; and (2) as such, the Subject Plant cannot be evaluated based on electricity prices and wholesale energy markets in the same way that merchant plants are evaluated. Given the guaranteed revenue stream it would not be financially feasible or maximally productive to sell the Subject Plant to a merchant generator. It is unlikely that DTE would continue to receive a return on the invested capital of the Subject Plant (stranded cost) if the Subject Plant sold below its current net book value.

Respondent relies on its Valuation Disclosure/Appraisal by Respondent's Appraisers Mark Pomykacz and Chris Olmsted."

- F. Intervening Respondent's claims or counterclaims:

1. “There are no known additions for the tax years at issue as that term[] is used in MCL 211.34d.
2. The parcels were classified as Industrial, including industrial real and personal and utility personal.
3. The parcels are used for industrial, and specifically utility/electric generation.
4. The parcels’ highest and best use is as designed and currently used, for utility/electric generation.
5. The subject property is properly and lawfully assessed.
6. The subject property is uniformly assessed at its true cash value.
7. Treasury incorporates its previously stated affirmative defenses, as provided in its answer to the petition and motion to amend, as if restated herein. Treasury reserves the right to raise other defenses as they become known.”

IV. PENDING MOTIONS OR DISCOVERY:

- A. Motions: None pending.
- B. Discovery: Discovery is closed unless otherwise stated below.

SCHEDULING ORDER³

The parties and the Tribunal have determined that the hearing in the above-captioned case shall be conducted as a video conference proceeding. Although video conference proceedings via *Microsoft Teams* are generally set up using email addresses, the Tribunal has provided a “Teams Hearing Link” that can be utilized by participants (i.e., attorneys or agents, witnesses, the court reporter, etc.) to “join” the hearing **and the parties or their attorneys or agents are required to provide that link to their participants** so that they can **timely** “join the hearing.”

The Tribunal has also provided a link to the *MOAHR MTT Guide for Participants for the Conducting of Entire Tribunal Video Conference Hearings*. Participants **should review** the Guide **prior to the hearing**, as participants **are required to comply** with the requirements of the *Guide*, as said requirements will facilitate the conducting and transcription of the scheduled hearing. The **parties or their attorneys or agents** are also **required** to provide the link to the *MOAHR MTT Guide for Participants to their participants* so that they are **aware of and can comply with** those requirements.

- I. **August 30, 2021** is the final date for the parties to submit their exhibit lists **and** exhibits, with the exception of rebuttal exhibits, to the Tribunal by **e-filing or email** and the opposing party or parties by **email**. For the exhibit list, the parties **must use** the form prescribed by the Tribunal. The exhibit list and exhibits **shall be submitted**

³ If the Tribunal begins conducting in-person hearings prior to the date for the commencement of the scheduled video hearing in this case, a telephonic status conference will be conducted with the parties to discuss the possible conducting of a hybrid in-person hearing.

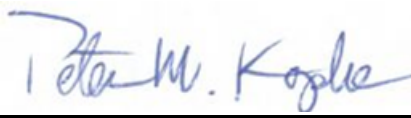
as provided in the **MOAHR MTT Guide for Participants**. An exhibit will **not** be admitted into evidence unless the exhibit is disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal. The exhibits may be submitted separately or in a single document **provided** that the single document or PDF is **bookmarked** so that each exhibit can be easily accessed.

- II. **August 30, 2021** is the final date for Petitioner to notify the Tribunal **by e-filing or email** of the name and telephone number of the court reporter retained by the parties to transcribe the hearing, as provided in the **MOAHR MTT Guide for Participants**.

IT IS SO ORDERED.

Failure to comply with this Order may result in the dismissal of the case or the conducting of a show cause or default hearing.⁴

Entered: April 16, 2021
pmk

By 

⁴ See TTR 231(1) and (4). See also *Grimm v Dep't of Treasury*, 291 Mich App 140, 149-50; 810 NW2d 65 (2010) and MCL 205.732(c).

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Administrative Hearing Rules (R 792.10101-R 792.11289) and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy toward other parties, witnesses, and administrative law judges, which includes attending the hearing on time, silencing cell phones, and dressing in appropriate clothing for in-person hearings.

REPRESENTATION: A party may be represented by an attorney or other authorized representative of the party's own choosing and at the party's own expense. The Michigan Office of Administrative Hearings and Rules does not recommend or appoint attorneys.

WITNESSES: Parties may present witnesses, if any, identified in the Prehearing Statements, to testify under oath or affirmation at the hearing, subject to cross-examination by the opposing party, and questions by the administrative law judge.

EXHIBITS: The parties shall bring two (2) copies of all proposed exhibits (i.e., file copy and Judge's copy) to the hearing. Each exhibit must display the docket number and exhibit number (i.e., P1, P2, R1, R2, etc.) in the upper right-hand corner of the first page of each copy of each proposed exhibit. If an exhibit contains multiple pages, each page shall be numbered. The proposed exhibits must be separated into numerical order sets and indexed for easy reference.

COURT REPORTER: The parties shall not only provide a court reporter to transcribe the hearing but shall also provide an electronic copy of the hearing transcript to the Tribunal by e-mailing it to taxtrib@michigan.gov. The costs attributable to the court reporter shall be shared equally by the parties. If the parties fail to pay the costs of the transcript to the court report prior to the submission of the transcript to the Tribunal, the court reporter may report this to the Tribunal with the submission of the transcript. As a result, the party or parties who failed to pay the costs associated with the transcript may be held in default.⁵

WITHDRAWAL: If Petitioner no longer wants to continue with the appeal, Petitioner may submit a written request to withdraw the case. Respondent must concur with the withdrawal. The request must be submitted to the Tribunal and served on Respondent at least 14 days before the hearing. Respondent may file a concurrence or objection to the request within 7 days of the service of the request on that party. If Respondent does not timely submit a concurrence or objection to the request will be deemed to be a concurrence to the request. If the request is granted, the case will be dismissed. If a request is not granted or the Tribunal has not notified you that it has been granted, you are required to attend the hearing.

SETTLEMENT: Parties may submit a written agreement settling a case (i.e., stipulation). The stipulation must be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form and be signed by the parties' attorneys or authorized representatives, if they have attorneys or

⁵ See TTR 321.

authorized representatives, or by the parties, if they do not have attorneys or authorized representatives. There is a \$50 fee for the filing of the stipulation. If the stipulation with appropriate filing fee is received by the Tribunal or the parties email a copy of the signed stipulation to the Tribunal by 4:30 p.m. on the business day immediately preceding the day of the scheduled hearing, the hearing may be adjourned. Parties that email a copy of a signed stipulation to the Tribunal for purposes of adjourning a hearing are also required to submit the original signed stipulation with appropriate filing fee. The stipulation, once submitted, will be reviewed and, if accepted, the Tribunal will issue a consent judgment.

FAILURE TO APPEAR: The failure of a party to timely appear or otherwise participate in a hearing will result in adjournment of the hearing and the holding of that party in default. The defaulted party will be given an opportunity to show good cause for the failure to appear. Failure to respond or show good cause may result in dismissal of the case or the conducting of a default hearing.

REASONABLE ACCOMMODATION: All hearings are conducted in a barrier-free location in compliance with the Americans with Disabilities Act. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact the MOAHR by telephone at (517) 335-9760, or complete and submit an accommodation request form at

https://www.michigan.gov/documents/lara/Disability_Accommodation_FORM_v1_2_464017_7.doc within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the Tribunal and other parties and their attorneys or representatives. The MOAHR will use the private information solely for purposes related to the hearings process. A party may file a motion to request that a public hearing be closed in part or file a motion for protective order to deem certain information private and confidential in order to afford that information special protection.

CONTACT INFORMATION:

Michigan Tax Tribunal

Mailing Address: P.O. Box 30232, Lansing, MI 48909

Phone: (517) 335-9760

E-Mail: taxtrib@michigan.gov

Website: www.michigan.gov/taxtrib

E-Filing: <https://eFiling.apps.lara.state.mi.us>

Office Hours: 8:00 a.m. – 5:00 p.m., our office is closed from 12:00 p.m. – 1:00 p.m.